CUSTOMS BULLETIN AND DECISIONS

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Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

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This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decision

19 CFR Part 12

(T.D. 93–27)

COUNTRY OF ORIGIN OF TEXTILE PRODUCTS FROM U.S. INSULAR POSSESSIONS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulation; solicitation of comments.

SUMMARY: This document amends the Customs Regulations to provide that textiles and textile products produced or manufactured in an insular possession of the United States, if subsequently assembled, advanced in value or improved in condition in a foreign country, will not be treated as having their origin in that insular possession for purposes of the U.S. textile import program. The amendment is intended to ensure that such products will be subject to the same rules of origin as products of the United States for quota, visa and other textile restraint purposes.

DATES: This interim rule is effective May 14, 1993. This interim regulation is applicable to all textiles and textile products exported from their country of origin on or after May 14, 1993. Comments must be received on or before June 14, 1993.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at Franklin Square, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Phil Robins, Office of Regulations and Rulings (202–482–7050).

SUPPLEMENTARY INFORMATION:

BACKGROUND

In order to implement import policies with respect to textiles and textile products, section 204 of the Agricultural Act of 1956, as amended

(7 U.S.C. 1854), authorizes the President to negotiate textile restraint agreements with foreign governments and to carry out such agreements by issuing regulations governing the entry into the United States of merchandise covered by those agreements. The Committee for the Implementation of Textile Agreements (CITA) was established by Executive Order 11651 on March 3, 1972, to supervise the implementation of textile agreements. Section 2(a) of that Executive Order requires the Commissioner of Customs to take such actions as CITA, through its Chairman, shall recommend to carry out agreements and arrangements entered into by the United States pursuant to section 204.

In December 1973 representatives of 50 nations concluded negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT) which resulted in the Multi-Fiber Arrangement Regarding International Trade in Textiles, commonly referred to as the Multi-Fiber Arrangement or MFA. The United States has negotiated a number of bilateral and multilateral textile agreements with foreign government signatories to the MFA, and additional agreements have been negotiated with foreign governments outside the MFA framework. For U.S. import purposes, each agreement generally incorporates a consultative procedure and provides for the imposition of quantitative limits (quotas) and documentary controls (such as visas or export licenses) in order to ensure that textiles and textile products produced in the foreign country enter the U.S. market in an orderly fashion and in a manner which is consistent with overall policy objectives under the U.S. textile import program.

On May 9, 1984, the President issued Executive Order 12475 to address a number of problems which had arisen in the context of the U.S. textile import program. These problems included (1) the absence of specific regulatory standards for determining the origin of imported textiles and textile products for purposes of textile agreements and (2) an ever increasing number and variety of instances in which attempts were made to circumvent and frustrate the objectives of the U.S. textile import program and the bilateral and multilateral textile agreements negotiated thereunder. Section 1(a) of that Executive Order instructed the Secretary of the Treasury, in accordance with policy guidance provided by CITA through its Chairman, to issue regulations governing the entry of textiles and textile products subject to section 204 of the Agricultural Act of 1956, as amended.

Interim Customs Regulations amendments implementing section 1(a) of Executive Order 12475 were published in the Federal Register on August 3, 1984, as T.D. 84–171 (49 FR 31248). Although T.D. 84–171 invited public comments on the regulatory changes, the interim regulations took effect for all textiles and textile products subject to section 204 of the Agricultural Act of 1956, as amended, exported from the country of origin (as defined in those regulations) on or after September 7, 1984. The legality of these interim regulations, including the effective date provision, was upheld in *Mast Industries, Inc. v. Regan,* 596

F.Supp. 1567 (CIT 1984). Following the close of the public comment period on the interim regulations and after an analysis of the comments submitted, the interim regulations, with certain changes, were published as a final rule on March 5, 1985, as T.D. 85–38 (50 FR 8710).

The main body of the regulations discussed above is contained in section 12.130 (19 CFR 12.130) which sets forth general and specific rules for determining the country of origin of imported textiles and textile products for purposes of textile agreements entered into by the United States pursuant to section 204 of the Agricultural Act of 1956, as amended. The general country of origin rules are set forth in paragraph (b) of section 12.130 and incorporate, among other things, the following principles: (1) except as provided in paragraph (c), a textile or textile product which consists of materials produced or derived from, or processed in, more than one foreign territory or country, or U.S. insular possession, shall be a product of that foreign territory or country, or insular possession, where it last underwent a substantial transformation; and (2) a textile or textile product will be considered to have undergone a substantial transformation if it has been transformed by means of substantial manufacturing or processing operations into a new and different article of commerce.

Paragraph (c) of section 12.130 operates as an exception to the basic country of origin rule set forth in paragraph (b) and specifically applies to products of the United States which, under Note 2 to Subchapter II of Chapter 98, Harmonized Tariff Schedule of the United States (HTSUS), are treated as foreign articles for purposes of the Tariff Act of 1930, as amended. In this regard paragraph (c) provides that, in order to have a single country of origin for a textile or textile product and notwithstanding paragraph (b), any product of the United States which is returned after having been advanced in value or improved in condition abroad, or assembled abroad, may not be considered a product of the United States upon such return. Thus, for example, garment parts which are cut in the United states and sent abroad for assembly into completed garments are always considered to have their origin in the assembling country and to be subject to all quota and visa requirements applicable to products of that country upon return to the United States (even if the foreign assembly operation would not result in the merchandise being a product of that foreign country under the general and specific rules set forth elsewhere in section 12.130).

CITA has determined that the overall policy objectives of the U.S. textile import program, as well as the specific textile agreements thereunder, are still being circumvented and frustrated because of the use of various manufacturing operations involving U.S. insular possessions which afford textiles and textile products produced in U.S. insular possessions more favorable quota and visa treatment than textile and textile products produced in the United States. It has been noted in this regard that paragraph (c) of section 12.130 does not apply to products of U.S. insular possessions. As a result, garment parts which are cut in a

U.S. insular possession and sent to a foreign country for assembly into completed garments would remain products of the insular possession upon importation into the United States so long as the foreign assembly operation did not result in a product of the foreign country under the general and specific rules set forth in section 12.130. Since quota and visa requirements do not apply to textiles and textile products which are products of a U.S. insular possession under the section 12.130 rules, such garment parts would thus receive import treatment clearly more favorable than that accorded to U.S.-produced garment parts subjected to the same assembly operation in a foreign country to which quota and visa requirements apply.

The Chairman of CITA has specifically recommended to Customs that section 12.130 be amended at the earliest practicable date to ensure that textiles and textile products produced in U.S. insular possessions do not continue to receive the preferential treatment described above in contravention of the overall goals of the U.S. textile import program. Accordingly, this document amends paragraph (c) of section 12.130 on an interim basis to provide that the same origin principle applicable to products of the United States under that paragraph will apply to products of U.S. insular possessions.

COMMENTS

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4, Treasury Department Regulations (31 CFR 1.4), and section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Franklin Square, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

INAPPLICABILITY OF PUBLIC NOTICE PROCEDURES

Pursuant to the provisions of 5 U.S.C. 553(a) public notice is inapplicable to this regulation because it is promulgated pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and is thus within the foreign affairs function of the United States and the foreign affairs exemption of 5 U.S.C. 553(a)(1). This regulation is necessary in order to prevent circumvention or frustration of bilateral and multilateral agreements to which the United States is a party and to facilitate efficient and equitable administration of the U.S. textile import program as authorized in section 204. The authority to promulgate this regulation was delegated by the President to the Secretary of the Treasury by Executive Order 12475.

EXECUTIVE ORDER 12291

Because this document concerns a foreign affairs function of the United States it is not subject to E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

REGULATORY FLEXIBILITY ACT

For the reasons set forth above and because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

DRAFTING INFORMATION

The principal author of this document was Francis W. Foote, Regulations Branch, U.S. Customs Service. However, personnel from other Customs offices and the Department of Commerce participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 12

Customs duties and inspection, Imports, Textile products and apparel.

AMENDMENT TO THE REGULATIONS

For the reasons set forth above, Part 12, Customs Regulations (19 CFR Part 12), is amended as set forth below.

PART 12 – SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 continues to read, and a specific authority citation for sections 12.130 and 12.131 is added to read, as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * * * *

Sections 12.130 through 12.131 also issued under 7 U.S.C. 1854;

* * * * * * *

2. Section 12.130 is amended by redesignating paragraph (c) and its heading as paragraph (c)(1), adding a new heading to paragraph (c), and adding paragraph (c)(2) to read as follows:

§ 12.130 Textiles and textile products country of origin.

* * * * * * *

(c) *Articles exported for processing and returned.*

(1) * * *

(2) *Applicability to U.S. insular possession products processed outside the insular possession.* Unless otherwise required by law, the rules of origin applicable to products of the U.S. shall also apply to products of insular possessions of the U.S. Accordingly, notwithstanding paragraph (b) of this section, for purposes of section 204, Agricultural Act of 1956, as amended, products of insular possessions of the U.S., if imported into

the U.S. after having been advanced in value, improved in condition, or assembled, outside the insular possessions shall not be treated as products of those insular possessions.

* * * * * * *

MICHAEL H. LANE,
Acting Commissioner of Customs.

Approved: February 25, 1993.
JOHN P. SIMPSON,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, April 14, 1993 (58 FR 19347)]

U.S. Customs Service

Proposed Rulemaking

19 CFR Part 122

ADDITION OF DOUGLAS MUNICIPAL AIRPORT TO LIST OF DESIGNATED LANDING LOCATIONS FOR PRIVATE AIRCRAFT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations by adding Douglas Municipal Airport, Douglas, Arizona, to the list of designated airports at which private aircraft, arriving in the Continental U.S. via the U.S./Mexican border, the Pacific Coast, the Gulf of Mexico, or the Atlantic Coast, from certain locations in the southern portion of the Western Hemisphere, must land for Customs processing. This amendment is made to improve the effectiveness of Customs enforcement efforts to combat the smuggling of drugs by air into the United States, as Douglas is adjacent to the Southwest Border of the U.S. and is on a regularly traveled flight path, and to improve service to the community, by relieving congestion at the Bisbee-Douglas International Airport, also located in Douglas, Arizona.

DATES: Comments must be received on or before June 14, 1993.

ADDRESS: Written comments (preferably in triplicate) may be addressed to U.S. Customs Service, Office of Regulations and Rulings, Regulations Branch, Franklin Court, 1301 Constitution Avenue, NW., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, located at Franklin Court, 1099 14th St., NW, Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Joe O'Gorman, Office of Inspection and Control, (202) 927–0543.

SUPPLEMENTARY INFORMATION:

Background

As part of Customs efforts to combat drug-smuggling efforts, Customs air commerce regulations were amended in 1975 to impose special

reporting requirements and control procedures on private aircraft arriving in the Continental United States from certain areas south of the United States. T.D. 75–201. Thus, commanders of such aircraft are required to furnish Customs with timely notice of their intended arrival and certain private aircraft must land at designated airports for Customs processing. Since 1975, the list of designated airports has been changed and the reporting requirements and control procedures – now contained in Subpart C of Part 122 of the Customs Regulations (19 CFR Subpart C, Part 122) – have been amended, as necessary.

Specifically, § 122.23 (19 CFR 122.23) provides that subject aircraft arriving in the Continental U.S. must furnish a notice of intended arrival at the designated airport located nearest the point of crossing. And § 122.24(b) further provides that, unless exempt, such aircraft must land at the designated airport for Customs processing and delineates those airports designated for private aircraft reporting and processing purposes. There are currently 28 designated airports listed at § 122.24(b).

Community officials from Douglas, Arizona, have requested that certain Customs facilities be made available at the Douglas Municipal Airport for purposes of federal inspection. The request is based on the proximity of the airport to the center of business activity and the fact that significantly better facilities are available at that airport than at Bisbee-Douglas International Airport, which is also located in Douglas, Arizona. Customs has determined that the addition of Douglas Municipal Airport to the list of designated landing sites for subject aircraft will improve the effectiveness of Customs drug-enforcement programs relative to private aircraft arrivals, as Douglas is adjacent to the Southwest Border of the U.S. and is on a regularly traveled flight path. Further, the designation would enhance the efficiency of the Customs Service, as the airport is close to the normal work location for inspectional personnel assigned in the Port of Douglas-area. In this regard, it is pointed out that the private aircraft processing services Customs provides at the Bisbee-Douglas International Airport will continue; designating Douglas Municipal Airport is meant to provide an alternative airport to Bisbee-Douglas International in order to relieve air traffic congestion there.

Although notice of this proposed designation is not required to be published in the Federal Register, comments are solicited from interested parties concerning whether or not the Douglas Municipal Airport should be designated as an airport for the landing of private aircraft.

COMMENTS

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b), on regular business days between

the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1099 14th St., NW, 4th floor, Washington, DC.

Inapplicability of the Regulatory Flexibility Act and Executive Order 12291

Because this proposed amendment seeks to expand the list of designated airports at which private aircraft may land for Customs processing, which will not result in a significant economic impact, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that the proposed amendment will not have a significant impact on a substantial number of small entities. Further, as this amendment does not meet the criteria for a "major rule" as defined in E.O. 12291, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Gregory R. Vilders, Regulations Branch.

List of Subjects in 19 CFR Part 122

Air carriers, Air transportation, Aircraft, Airports.

Proposed Amendment to the Regulations

For the reasons stated above, it is proposed to amend part 122, Customs Regulations (19 CFR part 101), as set forth below:

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644; 49 U.S.C. App. 1509.

2. In § 122.24, paragraph (b) is amended by adding, in appropriate alphabetical order, "Douglas, Ariz." in the column headed "Location" and, on the same line, "Douglas Municipal Airport" in the column headed "Name".

Michael H. Lane,
Acting Commissioner of Customs.

Approved: February 22, 1993.
John P. Simpson,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, April 14, 1993 (58 FR 19366)]

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Dominick L. DiCarlo

Judges

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Decisions of the United States Court of International Trade

(Slip Op. 93–50)

NSK LTD. AND NSK CORP., PLAINTIFFS *v.* UNITED STATES, DEFENDANT, AND TORRINGTON CO. AND FEDERAL-MOGUL CORP., DEFENDANT-INTERVENORS

Court No. 91–08–00578

Plaintiffs move pursuant to Rule 56.1 of the Rules of this Court for partial judgment on the agency record as to Count VII of their complaint claiming that the Department of commerce, International Trade Administration ("ITA"), erred in deducting direct selling expenses from U.S. price rather than adding such expenses to foreign market value. Defendant claims that this issue should be dismissed as moot since it affects deposit rates established during the first administrative review, which have now been superseded by the second administrative review.

Held: Plaintiffs' motion is not moot as it falls under an exception to the mootness doctrine since the issue at hand is capable of repetition and will evade review in the future. Furthermore, plaintiffs' motion for partial judgment on the agency record is granted.

[Plaintiffs' motion for partial judgment on the agency record granted.]

(Dated April 2, 1993)

Coudert Brothers (*Robert A. Lipstein, Matthew P. Jaffe* and *Nathan V. Holt*) for plaintiffs.

Stuart E. Schiffer, Acting Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*Velta A. Melnbrencis*); of counsel: *Stephen J. Claeys*, Attorney-Advisor, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, for defendant.

Stewart and Stewart (*Eugene L. Stewart, Terence P. Stewart, James R. Cannon, Jr., Geert De Prest, John M. Breen, Margaret E.O. Edozien* and *Amy S. Dwyer*) for defendant-intervenor The Torrington Company.

Frederick L. Ikenson, P.C. (*Frederick L. Ikenson, J. Eric Nissley, Joseph A. Perna, V* and *Larry Hampel*) for defendant-intervenor Federal-Mogul Corporation.

OPINION

TSOUCALAS, *Judge:* Plaintiffs, NSK Ltd. and NSK Corporation ("NSK"), move pursuant to Rule 56.1 of the Rules of this Court for partial judgment on the agency record as to Count VII of their complaint claiming that the Department of Commerce, International Trade Administration ("ITA" or "Commerce"), erred in deducting direct selling expenses from U.S. price rather than adding such expenses to foreign market value.

The administrative determination under review is the ITA's final results in *Antifriction Bearings (Other Than Tapered Roller Bearings)*

and Parts Thereof From Japan; Final Results of Antidumping Duty Administrative Reviews ("*Final Results*"), 56 Fed. Reg. 31,754 (1991). Substantive issues raised by NSK in the underlying administrative proceeding were addressed by ITA in the Issues Appendix to *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Republic of Germany; Final Results of Antidumping Duty Administrative Review* ("*Issues Appendix*") 56 Fed. Reg. 31,692 (1991).

BACKGROUND

On June 11, 1990, the ITA initiated an administrative review of ball bearings, cylindrical roller bearings, spherical plain bearings and parts thereof from Japan. *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom Initiation of Antidumping Administrative Reviews,* 55 Fed. Reg. 23,575 (1990). NSK participated in this review. *Id.*

On March 15, 1991, the ITA published its preliminary determination in the administrative review. *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts thereof from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Antidumping Duty Administrative Reviews,* 56 Fed. Reg. 11,186 (1991).

On July 11, 1991, the ITA published its Final Results in this proceeding. *Final Results,* 56 Fed. Reg. at 31,754. In its final results, Commerce deducted direct selling expenses from U.S. price in exporter's sales price transactions. *Issues Appendix* at 31,722–23. NSK claims that this was not in accordance with law. Commerce claims that this issue should be dismissed as moot since the issue at hand affects deposit rates established during the first administrative review, which have been superseded by the second administrative review. *Defendant's Memorandum in Opposition to Plaintiffs' Partial Motion for Judgment Upon the Agency Record* at 2–6.

DISCUSSION

It is well-established that an "actual controversy must exist at stages of appellate or certiorari review, and not simply at the date the action is initiated." *See Roe v. Wade,* 410 U.S. 113, 125 (1973); *see also SEC v. Medical Comm. for Human Rights,* 404 U.S. 403, 407 (1972).

In *PPG Indus., Inc. v. United States,* 11 CIT 303, 660 F. Supp. 965 (1987), Commerce completed an administrative review pursuant to 19 U.S.C. § 1675(a) (1988 & Supp. 1992) before the court rendered its decision in a challenge to the final determination in an investigation. In that case, the court granted the government's motion to dismiss based on mootness claiming that the issues presented in the actions challenging the original countervailing duty determination were rendered moot

upon the completion and the issuance of the results of the 751 review proceedings. *Id.* at 314–15, 660 F. Supp. at 974. The court stated that

> any remand directing the ITA to alter the amount of deposit rates determined in the final affirmative countervailing duty order, after the 751 review has already been published establishing the countervailing duties to be assessed or deposited on future entries, would be futile since the remand could never affect the amount of the actual countervailing duty assessments nor the deposits of estimated duties.

Id. at 309, 660 F. Supp. at 970.

Similarly, the court has vacated its remand orders to Commerce for recalculation of dumping margins because of the publication of the administrative review determination. *See Koyo Seiko Co. v. United States,* 16 CIT ____, 796 F. Supp. 1526, *amended by* 16 CIT ____, 806 F. Supp. 1008 (1992). Thus, the issue at hand has repeatedly been deemed moot.

The courts, however, have recognized an exception to the mootness doctrine when an issue is "capable of repetition, yet evading review." *Southern Pacific Terminal Co. v. ICC,* 219 U.S. 498, 515 (1911); *Roe,* 410 U.S. at 125; *DeFunis v. Odegaard,* 416 U.S. 312, 319 (1974). Plaintiffs claim that the instant action falls within this exception. *Reply Brief in Support of Plaintiffs' Motion for Partial Judgment on the Agency Record* at 3–4. The Court agrees.

The court attempted to decide the issue at hand in *Koyo Seiko,* 16 CIT ____, 796 F. Supp. 1526. In that case, the court remanded the issue back to Commerce to recalculate dumping margins to reflect an adjustment to foreign market value for direct selling expenses. *Id.* Subsequent to the decision, however, the issue became moot and the court issued an amended judgment vacating the order. *See Koyo Seiko,* 16 CIT ____, 806 F. Supp. 1008. Thus, it is apparent that this issue is capable of repetition and will evade review in the future and, therefore, this Court is at liberty to render a decision on the issue in the case at hand.

Direct Selling Expenses:

According to 19 U.S.C. § 1677a(e) (1988), "the exporter's sale price shall be adjusted by being reduced by the amount, if any, of * * * (2) expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise."

The Court of Appeals, however, has interpreted section 1677a(e) to refer to indirect rather than direct selling expenses. *Consumer Prods. Div. SCM Corp. v. Silver Reed America,* 753 F.2d 1033, 1036–38 (Fed. Cir. 1985).

The courts have consistently held that "direct selling expenses are properly characterized as differences in circumstances of sale giving rise to an adjustment of FMV." *NTN Bearing Corp. of America v. United States,* 14 CIT 623, 637, 747 F. Supp. 726, 738–39 (1990); *Consumer Prods. Div.,* 753 F.2d at 1033; *The Timken Co. v. United States,* 11 CIT 786, 800, 673 F. Supp. 495, 509 (1987). In *NTN Bearing Corp. of*

America, 14 CIT 623, 747 F. Supp. 726, the court refused to recognize Commerce's argument that direct selling expenses should be deducted from the exporter's sales price and remanded the case to Commerce to recalculate dumping margins to reflect an adjustment to foreign market value for direct selling expenses.

The law is clear as to how Commerce is to deal with direct selling expenses, yet Commerce repeatedly ignores the law and disobeys the decisions of this Court. A remand in this case would be futile since it would affect only deposit rates which have been superseded by the second administrative review. Commerce, however, is cautioned that they are to adhere to the law and to the decisions of the court on this issue. If not, this Court will be compelled to order sanctions against the government and hold Commerce in contempt of court for repeatedly ignoring the well-established law on this issue.

CONCLUSION

In accordance with the foregoing opinion, plaintiffs' motion for partial judgment on the agency record is not moot since the issue at hand is capable of repetition and has been evading review. Furthermore, Commerce was in error in deducting direct selling expenses from U.S. price, and it should have added such expenses to foreign market value as the law clearly states. Nevertheless, a remand to Commerce for recalculation would serve no purpose since it would affect only deposit rates and the deposit rates have been superseded by the second administrative review.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C93/39 4/7/93 Musgrave, J.	Turbon Products, Inc.	89–06–00325	774.55 6.1%, 5.7%, 5.3%	676.50 4.7% 676.52 4.3%, 4.1%, etc., various rates depending on date of entry	Agreed statement of facts	Philadelphia, Baltimore Cartridges and parts
C93/40 4/7/93 Musgrave, J.	Turbon Products, Inc.	89–08–00471	774.58 5.3%	676.56 3.9% 676.54 duty free	Agreed statement of facts	Philadelphia, Harrisburg Cartridges and parts
C93/41 4/7/93 Musgrave, J.	World Wide Winter Wear, Ltd.	91–05–00391	379.95 21¢ per lb. plus 27.5% 383.90 22¢ per lb. plus 27.5%	376.56 13.5%	Agreed statement of facts	New York Man-made outerwear apparel

ABSTRACTED VALUATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	VALUATION	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
V93/7 4/7/93 Restani, J.	Leading Forwarders, Inc. a/o North American Foreign Trading Corp.	91–01–00021	Drawback claimed pursuant to 19 U.S.C. 1313(c)	99% refund of duties paid on four drawback entries	Agreed statement of facts	Not stated Imported watches returned to the seller

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